

CHAPTER 14

Criminal Extradition

SECTIONS

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§ 1401. Scope and limitation of chapter.

The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any extradition agreement with such foreign government and shall be read in light of and consistent with the extradition agreement pursuant to which a request for extradition is made.

Source: PL 5-22 § 2.

Cross-reference: FSM Const., art. IV. The provisions of the Constitution are found in Part I of this code. For other rights of defendants see Bill of Rights in chapter 1 of title 1 of this code. For statutory provisions on Crimes see title 11 of this code. For statutory provisions on Foreign Affairs Responsibilities and Procedures see chapter 5 of title 10 of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Editor's note: PL 5-22 was signed into law by the President on November 6, 1987.

Case annotations: Extradition is neither a criminal nor a civil proceeding. *In re Extradition of Jano*, 6 FSM R. 12, 13 (App. 1993).

No Micronesian custom or tradition is applicable to extradition. *In re Extradition of Jano*, 6 FSM R. 93, 97 (App. 1993).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. *In re Extradition of Jano*, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. *In re Extradition of Jano*, 6 FSM R. 23, 25 (App. 1993).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. *In re Extradition of Jano*, 6 FSM R. 23, 25 (App. 1993).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. *In re Extradition of Jano*, 6 FSM R. 26, 27 (App. 1993).

Extradition is not a criminal action although it involves a criminal accusation. The specific provisions of the international extradition statute apply rather than the general provisions of Title 12, chapter 2. *In re Extradition of Jano*, 6 FSM R. 62, 63 (App. 1993).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. *In re Extradition of Jano*, 6 FSM R. 93, 107-08 (App. 1993).

Where the extradition agreement specifically requires that the requesting government's statute of limitations be used to determine extraditability, a general provision cannot be read to apply the statute of limitations of the requested government. *In re Extradition of Jano*, 6 FSM R. 93, 108 (App. 1993).

§ 1402. Fugitives from foreign country to Federated States of Micronesia.

Whenever there is an agreement for extradition between the Federated States of Micronesia and any foreign government, any Federated States of Micronesia justice or any judge authorized to do so by a Federated States of Micronesia court may, upon complaint made under oath charging any person found within his jurisdiction with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such agreement, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice or judge, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of External Affairs, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

Source: PL 5-22 § 3.

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Cross-reference: For statutory provisions on Foreign Affairs Responsibilities and Procedures see chapter 5 of title 10 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

§ 1403. Secretary of External Affairs to surrender fugitive.

The Secretary of External Affairs may order the person committed under section 1402 of this chapter to be delivered to any authorized agent of such foreign government, to be tried for the offenses of which charged. Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty. A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

Source: PL 5-22 § 4, modified.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions the President and the Executive are found in title 2 of this code.

Case annotations: Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. *In re Extradition of Jano*, 6 FSM R. 23, 25 App. 1993).

§ 1404. Time of commitment pending extradition.

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the Federated States of Micronesia within two

calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the Federated States of Micronesia, any Federated States of Micronesia justice or any judge authorized to do so by a Federated States of Micronesia court upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of External Affairs, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

Source: PL 5-22 § 5.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

Case annotations: Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. *In re Extradition of Jano*, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if “special circumstances” are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. *In re Extradition of Jano*, 6 FSM R. 62, 64 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. *In re Extradition of Jano*, 6 FSM R. 93, 97 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. *In re Extradition of Jano*, 6 FSM R. 93, 104 (App. 1993).

§ 1405. Place and character of hearing.

Hearings in cases of extradition under an extradition agreement shall be held on land, publicly, and in a courthouse easily accessible to the public.

Source: PL 5-22 § 6.

Cross-reference: For constitutional provisions on the Judiciary see art. XI of the FSM Constitution. The provisions of the Constitution are found in Part I of this code.

For statutory provisions on the FSM Supreme Court and the Judiciary see title 4 of this code. For statutory provisions on Judicial Procedure see title 6 of this code.

Case annotations: An extradition hearing justice is required to make written findings for two reasons: 1) to meet the “rule of specialty” by which prosecution is limited to those offenses upon which extradition is granted, and 2) to reflect that the offenses for which extradition is granted is criminal in both the requesting and requested countries. *In re Extradition of Jano*, 6 FSM R. 93, 105 (App. 1993).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. *In re Extradition of Jano*, 6 FSM R. 93, 99 (App. 1993).

A person whose extradition is sought can always contest identification. *In re Extradition of Jano*, 6 FSM R. 93, 100 (App. 1993).

§ 1406. Evidence on hearing.

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal representative or liaison officer of the Federated States of Micronesia resident in such foreign country, if any, shall be proof that the same, so offered, are authenticated in the manner required. Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case may also be authenticated by any means provided for in an extradition agreement.

Source: PL 5-22 § 7.

Cross-reference: FSM Const., art. IV, § 6. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

Case annotations: A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government’s evidence of probable cause, but not evidence that contradicts it. *In re Extradition of Jano*, 6 FSM R. 93, 101 (App. 1993).

§ 1407. Witnesses for indigent fugitives.

On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the justice or judge hearing the matter may order that such witnesses be subpoenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpoenaed in behalf of the Federated States of Micronesia.

Source: PL 5-22 § 8.

Cross-reference: FSM Const., art. IV, § 6. The provisions of the Constitution are found in Part I of this code.

§ 1408. Protection of accused.

Whenever any person is delivered by any foreign government to an agent of the Federated States of Micronesia, for the purpose of being brought within the Federated States of Micronesia and tried for any offense of which he is duly accused, the Attorney General shall have power to take all necessary measures for the transportation and safekeeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter.

Source: PL 5-22 § 9.

Cross-reference: The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

§ 1409. Receiving and transporting offenders.

An officer of the Division of Security and Investigation or a State police officer authorized by the Attorney General shall receive, in behalf of the Federated States of Micronesia, the delivery, by a foreign government, of any person accused of a crime committed within the Federated States of Micronesia, and shall convey him to the place of his trial.

Source: PL 5-22 § 10.

§ 1410. Payment of fees and costs.

(1) All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority. All witness fees and costs of every nature in cases of international extradition shall be certified by the justice or judge before whom the hearing shall take place to the Attorney General, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Office of the Attorney General as the case may be.

(2) The Attorney General shall certify to the Secretary of External Affairs the amounts to be paid to the Federated States of Micronesia on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of External Affairs shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the General Fund of the Federated States of Micronesia.

Source: PL 5-22 § 11.

Cross-reference: FSM Const., art. IV, § 6. The provisions of the Constitution are found in Part I of this code.

For other rights of defendants see Bill of Rights in chapter 1 of title 1 of this code. For statutory provisions on Judicial Procedure see title 6 of this code. For statutory provisions on Crimes see title 11 of this code. For statutory provisions on Foreign Affairs Responsibilities and Procedures see chapter 5 of title 10 of this code.